

REMARKS

Summary of the Office Action

The drawings stand objected to because of informalities.

Examiner's acknowledgement of Applicants' election without traverse of the invention of Group I (claims 1-31 and 34) in Paper No. 4 filed on September 29, 2003 is acknowledged.

Claims 3, 4, 7, 26-27 and 30-31 stand rejected to under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 1, 9-11 and 24-31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 5,352,219 to Reddy.

Claims 1, 2, and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 5,931,777 to Sava.

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 5,352,219 to Reddy in view of U. S. Patent No. 5,176,129 to Smith.

Claims 5-7 and 12-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 5,352,219 to Reddy.

Claim 34 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 5,352,219 to Reddy in view of U.S. Patent No. 6,454,783 to Piskun.

Summary of the Response to the Office Action

Applicants submit concurrently herewith Replacement Sheets of Drawings containing Figures 5, 6, 7, 8 and 9.

Applicants have amended the Abstract as suggested by the Examiner.

Claims 1-4, 7, 24, 25, 28 and 34 have been amended to more particularly point out and distinctly claim the subject matter which the Applicants regard as their invention. Claims 26, 27, 29, 30 and 31 have been deleted. Claims 32 and 33 have been withdrawn. New claim 35 has been added. Accordingly, claims 1-25, 28, 29, 34 and 35 are presently pending for consideration on the merits.

The Drawings Do Not Contain Objectionable Subject Matter

The drawings stand objected to because the “through hole” of claims 25 and 29 must be shown in the drawings. By way of the attached hereto Submission of Replacement Drawings, Applicants have amended FIG. 5 to depict the hole through the blade portion 53 through which the middle portion 52 is inserted. Applicants respectfully submit that paragraph [0043] of the originally filed specification together with originally filed FIG. 5 clearly support the depiction of a hole through the blade portion 53 as is now shown in amended FIG. 5.

The drawings stand objected because the drawings do not include the reference elements “50,” “60,” “70,” “80” and “90” mentioned in the specification of the present application. By way of the attached hereto Submission of Replacement Drawings, Figures 5, 6, 7, 8 and 9 have

been labeled to respectively show the reference labels 50, 60, 70, 80 and 90 in accordance with the originally filed specification of the present application.

The drawings stand objected because the reference elements “21” and “23” are not mentioned in the specification of the present application. By way of the foregoing amendment to paragraph [0038] of the specification, the specification uses reference elements 21 and 23 to describe FIG. 2. Applicants respectfully submit that paragraph [0038] of the originally filed specification together with originally filed FIG. 2 clearly support the present amendment to paragraph [0038].

Applicants respectfully submit that no new matter has been added by way of the attached hereto Submission of Replacement Drawings or in the amendment of paragraph [0038]. Further, Applicants respectfully submit that the attached hereto Submission of Replacement Drawings or the amendment of paragraph [0038] address all of the objections to the drawings. Accordingly, Applicants respectfully request that the objections to the drawings be withdrawn.

The Abstract Does Not Contain Objectionable Subject Matter

By way of the foregoing amendment, the abstract of the present application has been amended in accordance with the Examiner’s suggestions. Accordingly, Applicants respectfully request that the objection to the abstract be withdrawn.

All Claims Comply with 35 U.S.C. § 112, second paragraph

Claims 3, 4, 7, 26-27 and 30-31 stand rejected to under 35 U.S.C. § 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully submit that foregoing Amendments to claims 1, 7, 26, 27, 30 and 31 address each of the 35 U.S.C. § 112, second paragraph, rejections to claims 3, 4, 7, 26-27 and 30-31. Accordingly, Applicants respectfully request that the 35 U.S.C. § 112, second paragraph, rejections to claims 3, 4, 7, 26-27 and 30-31 be withdrawn.

All Claims Comply with 35 U.S.C. § 102

Claims 1, 9-11 and 24-31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 5,352,219 to Reddy. To the extent that the Examiner may consider this rejection to still apply to amended independent claims 1, 24 and 28, this rejection is traversed as being based upon a reference that neither anticipates nor suggests the novel combinations of features now clearly recited in claims 1, 24 and 28, as amended.

By way of the foregoing amendment, independent claim 1 has been amended to recite a combination of features including “puncturing a wall of the body with the first end portion of the first piercing retractor such that the first end portion protrudes from the body and the second end portion is within the body and moving around the second end portion of the first piercing retractor within the body until enough anatomic working space is created in the body to treat a first tissue.” In contrast, Reddy discloses a procedure with surgical instrument 84 having a first end portion that punctures the wall of the body such that second end portion of the surgical instrument 84 protrudes from the body. Because Reddy discloses the second end portion of the

surgical instrument to be on the outside of the body, it is readily apparent that Reddy does not disclose moving around the second end portion of the first piercing retractor **within the body** (emphasis added) until enough anatomic working space is created in the body to treat a first tissue,” as now recited in amended independent claim 1. Accordingly, Applicants respectfully assert that Reddy does not anticipate all of the features now clearly recited in amended independent claim 1. Applicants also respectfully assert that dependent claims 9-11 are allowable at least because of their dependency on amended independent claim 1, and for the additional features that they recite.

By way of the foregoing amendment, independent claims 24 and 28 have been amended to recite a combination of features including one of a grip and a retractor bar secured to the first end portion of the piercing retractor. Applicants respectfully submit that Reddy does not describe or suggest one of a grip and a retractor bar secured to the first end portion of the piercing retractor. Accordingly, Applicants respectfully assert that Reddy does not anticipate all of the features now clearly recited in amended independent claims 24 and 28. Applicants also respectfully assert that dependent claims 25 and 29 are allowable at least because of their respective dependencies on amended independent claims 24 and 28, and for the additional features that they recite.

At least for these reasons, Applicants respectfully request that the 35 U.S.C. § 102(b) rejection of claims 1, 9-11, 24, 25, 28 and 29 as being anticipated by Reddy should be withdrawn.

Claims 1, 2, and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 5,931,777 to Sava. To the extent that the Examiner may consider this rejection to apply to independent claim 1, as amended, the rejection is traversed as being based upon a reference that neither anticipates nor suggests the novel combination of features now clearly recited in independent claim 1, as amended.

As set forth above, independent claim 1 has been amended to recite a combination of features including “puncturing a wall of the body with the first end portion of the first piercing retractor such that the first end portion protrudes from the body and the second end portion is within the body and moving around the second end portion of the first piercing retractor within the body until enough anatomic working space is created in the body to treat a first tissue.” In contrast, Sava discloses a procedure with surgical instrument 10 having a first end portion 26 that punctures the wall of the body such that second end portion 14 of the surgical instrument 10 protrudes from the body. There is no description or suggestion in Sava that the first end portion 26 protrudes from the body while the second end portion 14 is within the body. Further, there is no description or suggestion in Sava of moving around the second end portion of the first piercing retractor **within the body** (emphasis added) until enough anatomic working space is created in the body to treat a first tissue,” as now recited in amended independent claim 1. Accordingly, Applicants respectfully assert that Sava does not anticipate all of the features now clearly recited in amended independent claim 1. Applicants also respectfully assert that dependent claims 2 and 8 are allowable at least because of their dependency on amended independent claim 1, and for the additional features that they recite.

All Claims Comply with 35 U.S.C. § 103

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Reddy in view of U. S. Patent No. 5,176,129 to Smith. To the extent that the Examiner may consider this rejection to still apply, Applicants respectfully assert that Smith does not cure the deficiencies of Reddy as discussed above with regard to claim 1 above. More specifically, Smith does not describe or suggest “puncturing a wall of the body with the first end portion of the first piercing retractor such that the first end portion protrudes from the body and the second end portion is within the body,” and “moving around the second end portion of the first piercing retractor within the body until enough anatomic working space is created in the body to treat a first tissue.” Moreover, claims 3 and 4 are dependent on independent claim 1, as amended, and thus are at least allowable for the same reasons as discussed above and for the additional features that they recite. Accordingly, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of claims 3 and 4 be withdrawn.

Claims 5-7 and 12-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Reddy. Claims 5-7 and 12-23 are dependent on independent claim 1, as amended, and thus are at least allowable for the same reasons as discussed above with regard to claim 1, as amended, and for the additional features that they recite. Accordingly, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of claims 5-7 and 12-23 be withdrawn.

Claim 34 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Reddy in view of U. S. Patent No. 6,454,783 to Piskun. To the extent that the Examiner may consider this rejection to still apply, Applicants respectfully assert that Piskun does not cure the deficiencies of Reddy as discussed above with regard to claim 1 above. More specifically, Piskun does not describe or suggest “puncturing a wall of the body with the first end portion of the first piercing retractor such that the first end portion protrudes from the body and the second end portion is within the body and moving around the second end portion of the first piercing retractor within the body until enough anatomic working space is created in the body to treat a first tissue.” Moreover, claim 34 is dependent on independent claim 1, as amended, and thus is at least allowable for the same reasons as discussed above with regard to independent claim 1, as amended, and for the additional features that it recites. Accordingly, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of claim 34 be withdrawn.

New Claim 35 Is Allowable

New claim 35 is allowable over the applied references at least for the same reasons as discussed above with regard to independent claims 24 and 28, as amended, and for the additional features that new claim 35 recites.

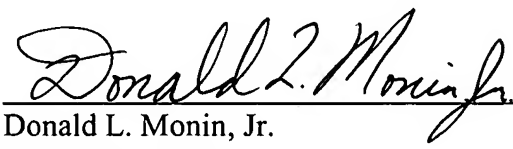
CONCLUSION

In view of the foregoing, Applicants respectfully request reconsideration and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of the response, the Examiner is invited to contact the Applicants' undersigned representative to expedite prosecution.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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